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ABSTRACT

The preservation of the public health is one of the duties devolving on the State as a sovereign power. However, the delivery system for health care service is not always efficient and effective, especially in the case of children. This paper, in attempting to define children's rights to health care, examines the statutory and case law in Mississippi and selected other States on children's health rights, and makes recommendations for improving Mississippi laws. (Author/JF)

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HEALTH RIGHTS OF CHILDREN IN MISSISSIPPI

BY

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

The author wishes to acknowledge the assistance in developing this paper of Dr. Ronald Partridge, Assistant Professor of Educational Administration, The University of Mississippi; Mrs. Kenneth Bender, a nurse; and Tom Collier, a student in the School of Law at The University of Mississippi.

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The preservation of the public health is one of the duties devolving on the state as a sovereign power. However, the delivery system for health care service is not always efficient and effective, especially in the case of children. This paper attempts to define children's rights to health care.

Statutory Law

Mississippi. In Mississippi, the schools have certain responsibilities for the health of the students, as may be seen in the following sections of the Mississippi Code Annotated (1972):

§37-7-301. Powers and duties

> The boards of trustees of school districts shall have the following powers, authority, and duties in addition to all others imposed or granted by law, to wit:
>
> . . . . . .
>
> (i) To require, upon the recommendation of the State Board of Health and the county health officer in whose health jurisdiction the school rests, the vaccination of school children against smallpox, typhoid fever, poliomyelitus or other contagious or infectious diseases and to require chest X-rays as soon as practicable, and to exclude from the schools children who have not been so vaccinated, as soon as practicable; however, the provisions hereof shall not apply to children whose parents or guardians are certified by an officer of their church to be bona fide members of a recognized denomination whose religious teachings require reliance on prayer or

spiritual means for healing. It is further provided that no child shall be required to submit to any vaccination where the parent has caused to be filed with the board of trustees a certificate of a physician that such vaccination would be dangerous to the health or safety of such child.

§37-13-19. Instruction in hygiene; physical education.

The state board of education shall make adequate provision for. . .regular periodic and thorough health examination and inspections of pupils and for such reasonable correlation as may be necessary for the betterment of health and treatment of abnormalities through available agencies inside or outside the public school system. . . .

§37-31-33. Utilization of appropriated funds.

For the purpose of enabling the state board of education to comply with the provisions of the federal social security act and to continue to extend and improve as far as practicable the services not maintained by said state board for locating crippled children and for providing medical, surgical, corrective, and other services, care and treatment, and facilities for diagnosis, hospitalization, and aftercare for children who are crippled or who are suffering from conditions which lead to crippling, any and all funds appropriated for physical restoration of crippled children for the above purposes may be used for the purposes set forth in this section.

Only recently has Mississippi made provision for testing for sickle cell anemia. The law establishing this in the Mississippi Code Annotated (1972) reads as follows.

§41-24-1. Establishment of testing program for sickle cell anemia or sickle cell trait.

The state Board of Health is hereby authorized and empowered to promulgate such rules and regulations necessary to establish a program of testing school age children, before or during the first year of attendance in a public school, to determine the presence of the disease or condition known as sickle cell anemia or sickle cell trait.

§41-24-3. Children to be tested.

In order to accomplish a program of testing for the condition known as sickle cell anemia and/or sickle cell trait which will be most effective and efficient throughout the state, the State Board of Health may, by rule or regulation, require testing of only those children who, because of race, ethnic group or affinity with persons known to be carriers of such condition, are determined to be particularly susceptible to the condition.

The procedures for handling eye inflammation of young children are described in the following sections:

§41-35-1. "Inflammation of the eyes of new born" defined.

Any inflammation, swelling or redness in either or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of any such infant, independent of the nature of the infection, if any occurring, any time within two weeks after birth of such infant, shall be known as "inflammation of the eyes of the new born."

§41-35-3. Duty to make report as to any inflammation of eyes of new born.

It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home or hospital of any nature, parent, relative or other person attendant on or assisting in any way whatsoever, any infant, or the mother of any infant, at childbirth, or at any time within two weeks after childbirth, knowing the condition defined in section 41-35-1 to exist, within six hours thereafter, to report such fact, as the state board of health shall direct, to the local health officer of the city, town, village, or whatever other political division there may be, within which the infant or the mother of the infant may reside.

§41-35-5. Duties of the local health officer.

It shall be the duty of the local health officer: (1) to investigate or to have investigated each case of inflammation of the eyes of the new born as filed with him, in pursuance of the law, and any other such case as may come to his attention; (2) to report all

cases of inflammation of the eyes of the new born and the result of all such investigations as the state board of health shall direct; (3) to conform to such other rules and regulations as the state board of health shall promulgate for his further guidance.

§41-35-7. Duties of the state board of health.

It shall be the duty of the state board of health: . . .(3) to provide for the gratuitous distribution of a scientific prophylactic for inflammation of the eyes of the new born, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth; (4) to provide, if necessary, daily inspection and prompt and gratuitous treatment to any infant whose eyes are infected with inflammation of the eyes; the state board of health, if necessary, shall defray the expenses of such treatment from such sums as may be appropriated for its use; (5) to publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the new born and the necessity for prompt and effective treatment; . . . .

§41-35-9. Duty of those in attendance at childbirth to use prophylactic in eyes of new born.

It shall be the duty of the physicians, midwives, or other persons in attendance upon a case of childbirth in a maternity home, hospital, public or charitable institution, in every infant immediately after birth, to use some prophylactic against inflammation of the eyes of the new born and to make record of the prophylactic used. It shall be the duty of such institution to maintain such records of cases of inflammation of the eyes of the new born as the state board of health shall direct.

It shall be the duty of a midwife in every case of childbirth under her care, immediately after birth, to use such prophylactic against inflammation of the eyes of the new born as the state board of health requires.

Sometimes parents or guardians are obstacles to children obtaining needed medical services due to their failure to consent to such services. The following sections of the Mississippi Code

Annotated (1972) apply to this situation:

§41-41-3. Who may consent to surgical or medical treatment or procedures

It is hereby recognized and established that, in addition to such other persons as may be so authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally, or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician:

. . . . . .

(b) Any parent, whether an adult or a minor, for his minor child. . . .

(c) Any married person, whether an adult or a minor, for himself, and where his joinder in the consent of his spouse may be desired or required, with his spouse.

(d) Any married person, whether an adult or a minor, for his spouse of unsound mind.

. . . . . .

(g) Any emancipated minor, for himself.

(h) Any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for himself.

(i) Any female, regardless of age or marital status, for herself when given in connection with pregnancy or childbirth.

. . . . . .

§41-41-9. Court or judge may consent to, or order, medical treatment; procedure, expense of treatment.

. . .[A]ny court having a clerk or any judge thereof may, in either term time or vacation, upon presentation of the written advice or certificate of one or more duly licensed physicians that in his or their professional opinion there is an immediate or imminent necessity for medical or surgical treatment or procedure for a minor. . .,[shall] summarily consent to or order and direct such surgical or medical treatment or procedures for the minor. . ., providing (1) some person authorized and empowered to consent to the surgical or medical treatment or procedures for such minor. . .has refused or declined to do so and there is no other person known to be immediately available who is so authorized,

> empowered, willing, and capacitated to so consent, and (2) there has been filed with or there is presented to such court or judge an application for a writ of habeas corpus as to such person. . .or some. . . instrument or pleading. . .invoking the aid or jurisdiction of said court or judge or the state, as parens patriae or otherwise, concerning the welfare of such person. Any subsequent dismissal, nonsuit, removal, transfer, overruling or denial of such original application, instrument or pleading, or denial of jurisdiction of the court or judge over the subject matter or necessary parties, shall not retroactively revoke, rescind or invalidate any prior consent.
>
> §41-41-13. Physician treating minor for venereal disease need not obtain parental consent.
>
> Any physician, duly licensed to practice medicine in the State of Mississippi, who, in the exercise of due care, renders medical care to a minor for treatment of a venereal disease is under no obligation to obtain the consent of a parent or guardian, as applicable, or to inform such parent or guardian of such treatment.

Certain children are eligible for services under "Medicaid," as established in the following section of the Mississippi Code Annotated (1972):

> §43-13-115. Persons entitled to receive medical assistance.
>
> Recipients of medical assistance shall be the following persons only:
>
> . . . . . .
>
> (2) Who are children under twenty-one (21) years who except for age or school attendance requirements, would be dependent children under the State's approved plan under Title IV of the Federal Social Security Act; or
>
> (3) Children in foster homes or private institutions for whom Mississippi public agencies are assuming financial responsibility; . . . .

The youth courts have a responsibility to provide certain physical or mental health services if a child is

found to be in need of them, as may be seen in the following passage from the Mississippi Code Annotated (1972):

> §43-23-21. Medical examination; transcript of records; conveyance of child to institution;
>
> The court may cause any child coming within its jurisdiction to have a physical and mental examination made. . . . If said medical examination discloses that any child is tubercular, feeble-minded or insane, such child shall not be committed to any state institution for delinquent or neglected children, but shall be committed in the manner provided by law to the particular state institution for such disabilities or infirmities.

Illegitimate children are entitled to the same support from the father for medical and related expenses as legitimate children. This may be seen in the following section of the Mississippi Code Annotated (1972):

> §93-9-7. Obligations of the father--definition.
>
> The father of a child which is or may be born out of lawful matrimony is liable to the same extent as the father of a child born of lawful matrimony, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement, and for the education, necessary support and maintenance, and medical and funeral expenses of the child. A child born out of lawful matrimony also includes a child born to a married woman by a man other than her lawful husband.

Alabama. The Code of Alabama (Cum. Supp. 1971) contains the following provisions affecting the health of children:

> §58 (1). Testing of infants for phenylketonuria; objection of parents; rules and regulations.--(a) It shall be the duty of the administrative officer or other person in charge of each institution caring for infants twenty-eight days or less of age, or the physician attending a newborn child, or the person attending a newborn child that was not attended by a physician, to cause to have administered to every

such infant or child in his care a reliable test for phenylketonuria (PKU), such as the Guthrie test or any other test considered equally reliable by the state board of health. Testing and the recording of the results of such tests shall be performed at such times and in such manner as may be prescribed by the state board of health. Provided, that no such test shall be given to any child whose parents object thereto on the grounds that such tests conflict with their religious tenets and practices.

(b) The state board of health shall promulgate such rules and regulations as it considers necessary to provide for the care and treatment of those newborn infants whose tests are determined positive, including but not limited to advising dietary treatment for such infants. The state board of health shall promulgate any other rules and regulations necessary to effectuate the provisions of this section.

§104(15). Individual consent of certain minors.--Any minor who is fourteen years of age or older, or has graduated from high school, or is married, or having been married is divorced, or is pregnant, may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself and the consent of no other person shall be necessary.

§104(16). Children with minor parents and minor parents. --Any minor who is married, or having been married is divorced, or has borne a child may give effective consent for any legally authorized medical, dental, health or mental health services for himself, his child, or for herself or her child.

§104(17). Pregnancy, venereal disease, drug dependency, alcohol toxicity and reportable diseases.--Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of or to treat pregnancy, venereal disease, drug dependency, alcohol toxicity or any reportable disease and the consent of no other person shall be deemed necessary.

§104(18). When consent not required; minors generally. --Any legally authorized medical, dental, health or mental health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the physician's judgement, an attempt to secure consent would result in delay of treatment which would increase the risk to the minor's life, health or mental health.

§104(19). Same; from spouse.--When a person (minor or adult) has not lived with his or her husband or wife for a period of one year or longer and when the location of said person's husband or wife is not known by the person whose husband or wife is missing, then such person (minor or adult) may give his or her consent to any legally authorized medical, dental, health or mental health services and the consent of the missing husband or wife shall not be required.

§104(21). Effect of consent of certain minor; liability for rendering services under this chapter; interpretation of chapter.--(1) The consent of a minor who professes to be but is not a minor whose consent alone is effective to medical, dental, health or mental health services shall be deemed effective without the consent of the minor's parent or legal guardian, if the physician or other person relied in good faith upon the presentations of the minor.

. . . . . .

§553. General provisions.--The department of education and the state board of health shall in conjunction arrange for the examination of each and every child attending the public schools of this state, both male and female, for any physical defects of any kind, embracing mental deficiency, diseases of the ear, eye, nose and throat, mouth and teeth, and deformity or dislocation of the hip joints or spinal disease, phymosis[sic], hookworm disease, and any and all other communicable or contagious diseases where either the county board of education or a city board of education or the state department of education has cause to believe that such child has a communicable or contagious disease, and any disease requiring medical or surgical aid in developing the child into a strong and healthly individual. The several county boards of education and county boards of health shall co-operate fully with the state board of education and the state board of health in the promotion of this work. . . .

The county or city board of education, upon receipt of a report from a medical officer, may suspend said child from attendance of any public school if said medical examiner is of the opinion that said communicable or contagious disease or any other disease will endanger the health of the pupils attending said school.

. . . . . .

Said child may be suspended for so long as said contagious or communicable disease or diseases enumerated above exists, or endangers the pupils attending said school, within the discretion of the examining authorities in boards before mentioned.

The Code of Alabama continues:

§554. When examination made.--Each and every child shall be examined before October first in each and every year by the county health officer, and the state superintendent of education shall have blanks printed to be furnished by the county superintendent of education to the various school districts. The county health officer of each county shall make such physical examinations of the school children and he shall secure such assistance from the county board of health as is necessary. All examinations held under this chapter shall be without charge to the child or its parents.

§559. County board of health to cooperate.--To the end that the objects and purposes of this chapter may be fully carried into effect, and the health of the school children of Alabama may be materially improved, the cooperation of the county board of health in various counties of Alabama, in conjunction with the county health officers, is expected without charge to the parent of the child.

California. The laws of the state of California contain the following provisions in the Health and Safety Code that relate to the health problems of children.

§249. Services for physically defective or handicapped minors; powers and duties of department

The Department of Health shall establish and administer a program of services for physically defective or handicapped persons under the age of 21 years, in cooperation with the federal government through its appropriate agency or instrumentality, for the purpose of developing, extending and improving such services. . . .

§250. Intent

It is the intent of the Legislature through the provisions of this article to provide, to the extent practicable, for the necessary medical services required by physically handicapped children whose parents are unable to pay for these services, wholly

or in part. The provisions of this article shall also include the necessary services rendered by the program to physically handicapped children treated in public schools that provide services for physically handicapped children.

§250.5 Handicapped child

"Handicapped child," as used in this article means a physically defective or handicapped person under the age of 21 years who is in need of services. The director shall establish those conditions coming within a definition of "handicapped child" except as the legislature may otherwise include in the definition. Phenylketonuria, hyaline membrane disease, cystic fibrosis, and hemophilia shall be among such conditions. . . .

§250.6 Keeping program abreast of advances in medical science; pilot studies

The department shall keep the program abreast of advances in medical science, leading to the inclusion of other handicapping conditions and services within the limits of and consistent with the most beneficial use of funds appropriated for this purpose. With the approval of the agency administrator the department may carry out pilot studies to determine the need for, or the feasibility of, including other handicapping conditions and services in the program within the limits of available funds appropriated for the program.

§250.7 Crippled children's services program; priorities

The department shall, without impairing existing programs, give priority to. . .

1. Endocrine and metabolic disorders including those posing medical management problems or problems of identification and diagnosis.

2. Convulsive disorders which are complicated in medical management or pose difficulties in diagnosis, or both.

3. Blood dyscrasias, including such conditions as sickle-cell anemia, aplastic anemia, hypoplastic anemia[sic], and comparable disorders of the blood system.

4. All neoplasms.

5. Severe skin disorders such as epidermolysis bullosa.

§253. Case findings; consent of parent or guardian

The department or designated county agency shall cooperate with, or arrange through, local public or private agencies and providers of medical care to seek out handicapped children, bringing them expert diagnosis near their homes. Case findings shall include, but not be limited to, children with impaired sense of hearing. This section does not give the department or designated agency power to require medical or other form of physical examination without consent of parent or guardian.

§253.5 Diagnosis for handicapped children

In accordance with applicable regulations of the United State Children's Bureau, the department and designated county agencies shall provide a diagnosis for handicapped children. Within the limits of available funds, the department and designated local agencies may accept for diagnosis a handicapped child believed to have a severe chronic disease or severe physical handicap, as determined by the director, irrespective of whether the child actually has an eligible medical condition. . . .

§254. Application for services

Whenever the parents or estate of a handicapped child is wholly or partly unable to furnish for the child necessary services, the parents or guardian may apply to the agency of the county which has been designated by the board of supervisors of the county of residence. . .to administer the provisions for handicapped children. . .

§263. Consent of parent or guardian; exception

This article does not authorize any treatment service without the written consent of a parent or guardian except as a person under 18 years is an emancipated minor.

§264. Effect of mental retardation

A handicapped child shall not be denied services pursuant to this article because he is mentally retarded.

§280. Detection of preventable heritable disorders; tests and regulations; reports; objections

It is the policy of the State of California to make every effort to detect, as early as possible, phenylketonuria and other preventable heritable disorders leading to mental retardation or physical defects.

The State Department of Health shall have the responsibility of designating tests and regulations to be used in executing this policy. Such tests shall be in accordance with accepted medical practices and shall be administered to each child born in California at such time as the department has established appropriate regulations and testing methods.

The department shall inform all hospitals or physicians, or both, of required regulations and tests and may alter or withdraw any such requirements whenever sound medical practice so indicates.

. . . . . .

The provisions of this section shall not apply if a parent or guardian of the newborn child objects to a test on the ground that the test conflicts with his religious beliefs or practices.

§295.1 Testing by local agencies; cost; results confidential

Local public health agencies shall make pregnancy testing services available free or at cost to the person using such services. The results of any pregnancy test shall be confidential.

§300. Maintenance of program

The State Department of Health shall maintain a program of child health.

§302. Compulsory medical or physical examination of children

This article does not give the department power to force compulsory medical or physical examination of children.

§304. Report of infant having rhesus isoimmunization hemolytic disease

Every licensed physician and surgeon or other person attending a newborn infant diagnosed as having

had rhesus (Rh) isoimmunization hemolytic disease shall report such condition to the State Department of Health on report forms prescribed by the department.

§310. (There are two sections with the same number. See below) Legislative findings

The Legislature finds that medical, educational and psychological evidence increasingly points to adequate nutrition as a determinant not only of good physical health but also of full intellectual development and educational achievement, with adequate nutrition in the earliest months and years being particularly important for full development of the child's mind and body, that problems of child nutrition cut across income lines and can result not only from low income but also from parental ignorance or neglect and that there is a need for a statewide child nutrition program which has the potential of reaching all pregnant women and mothers of infants.

§311. (There are two sections with the same number. See below) Establishment of pilot program

The State Department of Public Health may establish a five-year pilot project in not more than six counties to serve areas designated by the city or county health department or city and county health department as areas of high nutritional need under guidelines established by the department. . . .

§312. "Recipient" defined

As used in this article "recipient" means women during pregnancy and infants up to the age of one year living in areas designated as an area of high nutritional need.

§315. Distribution of coupons

Coupons in an amount sufficient to meet the nutritional needs of a recipient for one month shall be granted to a recipient by facilities and persons referred to in Section 313 upon the written finding of nutritional need by the recipient physician or other licentiate of the healing arts.

§316. Use of coupons

Nutrition coupons shall be used to buy only those items for which the coupons are issued at any market which accepts them.

§310. (There are two sections with the same number. See above.) State policy; detection; conduct of tests; time

It is the policy of the State of California to make every effort to detect, as early as possible, sickle cell anemia, a heritable disorder which leads to physical defects.

The State Department of Public Health shall have the responsibility of designating tests and regulations to be used in executing this policy. Such tests shall be in accordance with accepted medical practices.

Testing for sickle cell anemia may be conducted at the following times:

(a) Upon first enrollment of a child at an elementary school in this state, such child may be tested.

(b) For any child not tested pursuant to subdivision (a), upon first enrollment at a junior high school or senior high school in this state, as the case may be, such child may be tested.

(c) Upon application of any person for a license to marry, the parties seeking to be married may be tested.

The provisions of this section shall not apply if a parent or guardian of a minor child sought to be tested or any adult sought to be tested objects to the test on the ground that the test conflicts with his religious beliefs or practices.

§311. (There are two sections with the same number. See above.) Testing of population segment.

The State Department of Public Health may require that a test be given for sickle cell anemia pursuant to Section 310 to any identifiable segment of the population which the department determines is susceptiable to sickle cell anemia at a disproportionately higher ratio than is the balance of the population.

§353. Compulsory dental examination or service

Nothing in this article authorizes the state department to compel dental examinations or services.

Massachusetts. The laws of Massachusetts include the following provisions affecting the health of children.

§71-53. School Physicians and nurses

The school committee shall appoint one or more school physicians and nurses, shall assign them to the public schools within its jurisdiction, shall provide them with all proper facilities for the performance of their duties and shall assign one or more physicians to the examination of children who apply for health certificates. . ., but in cities where the medical inspection hereinafter prescribed is substantially provided by the board of health, said board shall appoint and assign the school physicians and nurses.

§71-53A. Employment of medical personnel by superintendency district or union; compensation; removal

A superintendency district. . .or a superintendency union. . .may employ one or more school physicians and may employ one or more school nurses; determine the relative amount of service to be rendered in each town; fix the compensation of each person so employed; apportion the payment thereof among the several towns; and certify the respective shares to the several town treasurers. A school physician or nurse so employed may be removed by a two thirds vote of the full membership of the joint committee. . . .

§71-54. Physical examination of school personnel

Every school physician shall make a prompt examination of all children referred to him as provided in this chapter, and such further examination of teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require. Every such physician who is assigned to perform the duty of examining children who apply for health certificates shall make a prompt examination of every child who wishes to obtain an employment permit. . .and who presents to said physician the pledge or promise of the employer. . .and the physician shall certify in writing whether or not in his opinion such child is in sufficiently sound health and physically able to perform the work described in said pledge or promise.

§71-54A. School physician; assignment to interscholastic football games

A physician employed by a school committee shall be assigned to every interscholastic football game played by any teams representing a public secondary school in the commonwealth.

§71-55. Contagious diseases; regulations

A child infected, or in a household where a person is infected with a disease dangerous to the public

health. . .or in a household exposed to contagion from any such disease in another household, shall not attend any public school while he is so infected or remains in a household where such infection or exposure exists if the regulations of the board of health require such exclusion. A child returning to school after having been absent on account of such infection or exposure shall present a certificate from the board of health or its duly appointed agent that the danger of conveying such disease by such child has passed; provided, that if such a child returns to school without such a certificate, after having been absent on account of such infection or exposure, he shall immediately be referred to a school physician for examination and, if it is found by such physician upon such examination that such danger has passed, he may remain at school.

§71-55A. Procedure for handling sick children

A child showing signs of ill health or of being infected with a disease dangerous to the public health. . .shall be sent home immediately, or as soon as safe and proper conveyance can be found, or shall be referred to a school physician, who may direct that such child be sent home. In the case of schools remotely situated, such other steps may be taken as will best effectuate the purpose of this section and ensure the safety of such child and of the other pupils. The superintendent of schools shall immediately cause the board of health to be notified of all children excluded under this section by reason of any disease dangerous to the public health.

§71-55C. Eye protection devices

Each teacher and pupil of any school, public or private, shall, while attending school classes in industrial arts or vocational shops or laboratories. . . wear an industrial quality eye protection device, approved by the department of public safety. Each visitor to any such classroom or laboratory shall also be required to wear such protective device.

§71-56. Sick children; notification to parents

If any child is found to be suffering from any disease or defect, or if any child is found to have any defect or disability requiring treatment, the school committee shall forthwith notify the parent or guardian of such child.

§71-57. Examinations for defects in eyes, ears and feet

The committee, or the board of health in those municipalities where school health services are the responsibility of the board of health, shall cause every child in the public schools to be separately and carefully examined. . .to ascertain defects in sight or hearing, and other physical defects tending to prevent his receiving the full benefit of his school work, or requiring a modification of the same in order to prevent injury to the child or to secure the best educational results, and to ascertain defects of the feet which might unfavorably influence the child's health or physical efficency, or both, during childhood, adolescence and adult years, and shall require a physical record of each child to be kept. . . . Any child shall be exempt on religious grounds from these examinations upon written request of parent or guardian on condition that the laws and regulations relating to communicable diseases shall not be violated.

§111-62A. Establishment of children's health camps in cities and towns

In each city and town which accepts this and the six following sections, . . .there shall, except as provided by section sixty-two F, be established, without unreasonable delay, one or more children's health camps for the care and treatment of children of school age in said city or town who upon examination are found to be in need of such care and treatment, but no child shall be given care or medical treatment whose parent or guardian objects thereto.

§111-62F. Formation of union children's health camp district by two or more cities or towns; management; commission; membership

Any two or more such cities or towns may vote to form, for such period of time not exceeding five years as such cities or towns may from time to time determine, a union children's health camp district for the purpose of establishing therein one or more union children's health camps. . . .

§111-62J. Purpose of school; children from other states

The Massachusetts hospital school shall be maintained primarily for the education and care of crippled and deformed children of the commonwealth. . . .

New York. The Public Health Law of the state of New York makes the following provisions for the health of children:

§2500-a. Test for phenylketonuria

It shall be the duty of (1) the administrative officer or other person in charge of each institution caring for infants twenty-eight days or less of age and (2) the person required. . .to register the birth of a child, to cause to have administered to every such infant or child in its or his care a test for phenylketonuria in accordance with rules or regulations prescribed by the commissioner. Testing and the recording of the results of such tests shall be performed at such time and in such manner as may be prescribed by the commissioner.

§2501. Health and welfare services to all children; duty of local boards

1. The local board of health or similar health authority of each local health district shall provide children who attend schools other than public with all or any of the health and welfare services and facilities, including but not limited to health, surgical, medical, dental and therapeutic care and treatment and corrective aids and appliances, authorized by law and now granted or hereafter made available by such local board of health or similar health authority for or to children in the public schools in so far as these services and facilities may be requested by the authorities of the schools other than public.

2. Any services or facilities provided pursuant to the provisions of this section shall be so provided notwithstanding any provision of any charter or other provision of law inconsistent herewith.

§2502. Report of certain conditions

Any midwife, nurse or other person having the care of an infant within the age of two weeks who neglects or omits to report immediately to the health officer or to a legally qualified practitioner of medicine of the city, town or place where such child is being cared for, the fact that one or both eyes of such infant are inflamed or reddened whenever such shall be the case, or who applies any remedy therefore without the advice, or except by the direction of such officer or physician is guilty of a misdemeanor.

§2570. Children's institutions; regular physician required

1. Every institution in this state, operated for the express purpose of receiving or caring for dependent, neglected or destitute children or juvenile delinquents, except hospitals, shall have attached thereto a regular physician of its selection duly licensed under the laws of the state and in good professional standing, whose name and address shall be kept posted conspicuously within such institution.

. . . . . .

§2571. Children's institutions; examination of children on admission

1. The administrative officer or person in charge of every institution in this state operated for the express purpose of receiving or caring for dependent, neglected or destitute children or juvenile delinquents, except hospitals, upon receiving a child therein, by commitment or otherwise, shall, before permitting such child to contact with other children, cause inquiry to be made concerning the presence or recent exposure of such child to a communicable disease.

2. If, on the basis of such inquiry, there is reason to suspect that such child may be ill or recently exposed to a communicable disease, such child shall not be permitted to contact other children until so authorized by the regular physician of the institution. A record of the results of all such inquiries and examinations shall be kept on file in the institution.

3. A thorough medical examination shall be performed on all children either immediately prior to admission to the institution or shortly thereafter.

§2575. Children's institutions; duty of local health officer

1. The county, part-county, city (over fifty thousand population)health commissioner or district state health officer within whose jurisdiction any institution for the care of children, referred to in this article, is situated, shall immediately investigate any complaint against the management of the institution as to the existence of any condition therein dangerous or detrimental to life or health.

2. If after such investigation, such health commissioner or health officer is satisfied that a

condition exists therein which is dangerous or detrimental to life or health, he shall cause the said condition to be remedied without delay.

§2580. Physically handicapped children; policy

It is the policy of the state of New York to provide medical service for the treatment and rehabilitation of physically handicapped children.

§2581. Physically handicapped children; definitions

As used in this article: 1. "Physically handicapped children" means any persons under twenty-one years of age who are handicapped by reason of a defect or disability, whether congenital or acquired by accident, injury, or disease, or who are suffering from long-term disease, including, but without limiting the generality of the foregoing, cystic fibrosis, muscular dystrophy, nephrosis, rheumatic fever and rheumatic heart disease, blood dyscrasies, cancer, brain injured, and chronic asthma, or from any disease or condition likely to result in a handicap in the absence of treatment, provided, however, no child shall be deprived of a service under the provisions of this chapter solely because of the degree of mental retardation.

2. "Medical service" means such diagnostic, therapeutic, and rehabilitative care by medical and paramedical personnel, including hospital and related care, and drugs, prostheses, appliances, equipment and devices as necessary.

§2582. Physically handicapped children; duty of the department

1. The department shall on its own initiative provide, within the limits of the appropriations made therefor, such medical service for physically handicapped children as in the judgement of the commissioner is needed.

. . . . . .

Pennsylvania. The laws of Pennsylvania, in Public School Code of 1949, as amended, make the following provisions:

§14-1402. Health services

(a) Each child of school age shall be given by methods established by the Advisory Health Board, (1) a vision test by a school nurse, medical technician or teacher, (2) a hearing test by a school nurse or

medical technician, (3) a measurement of height and weight by a school nurse or teacher, (4) tests for tuberculosis under medical supervision, and (5) such other tests as the Advisory Health Board may deem advisable to protect the health of the child. Vision tests shall be given at least annually and other tests at intervals established by the Advisory Health Board.

(a-1) Every child of school age shall be provided with school nurse services: Provided, however, that the number of pupils under the care of each school nurse shall not exceed one thousand five hundred (1,500).

(b) For each child of school age, a comprehensive health record shall be maintained by the school district or joint school board, which shall include the results of the tests, measurements and regularly scheduled examinations and special examinations herein specified.

(c) Medical questionnaires, suitable for diagnostic purposes, furnished by the Secretary of Health and completed by the child or by the child's parent or guardian, at such times as the Secretary of Health may direct, shall become a part of the child's health record.

(d) All teachers shall report to the school nurse or school physician any unusual behavior, changes in physical appearance, changes in attendance habits and changes in scholastic achievement, which may indicate impairment of a child's health. The nurse or school physician or school dentist may, upon referral by the teacher or on his own initiative, advise a child's parent or guardian of the apparent need for a special medical or dental examination. If a parent or guardian fails to report the results to the nurse or school physician, the nurse or school physician shall arrange a special medical examination for the child.

(e) The school physicians of each district or joint board shall make a medical examination and a comprehensive appraisal of the health of every child of school age, (1) upon original entry into school in the Commonwealth, (2) while in sixth grade, (3) while in eleventh grade, and (4) prior to the issuance of a farm or domestic service permit unless the child has been given a scheduled or special medical examination within the preceding four months. The health record of the child shall be made available to the school physician at the time of the regularly scheduled health appraisals.

. . . . . .

314-1403. Dental examinations

(a) All children of school age, in the Commonwealth, (i) upon original entry into the school, (ii) while in the third grade, and (iii) while in the seventh grade, shall be given a dental examination by a school dentist; provided, however, that this requirement shall not apply to those school districts or joint school boards which have instituted a program of dental hygiene services as provided in subsection (b) of this section.

(b) Any school district or joint school board may institute a program of dental hygiene services for children of school age, which program shall be approved by the Secretary of Health, and for that purpose may employ dental hygenists.

§14-1404. Place of examination, use of hospital facilities

The school physician and school dentist shall conduct medical, dental and other examinations in rooms set aside for this special purpose and equipped with adequate facilities and with such other accessories as may be required by the Secretary of Health for the thorough examination of children. The school physicians shall require the removal of sufficient clothing to insure complete examination. If facilities in schools are inadequate for conducting medical, dental and other examinations, the school districts or joint school boards and private schools may, subject to the approval of the Secretary of Health, make arrangements for the use of laboratories and facilities of hospitals or clinics for examinations herein provided for.

§14-1405. Assistance; presence of parents

Every school physician shall be assisted by a school nurse and every school dentist by a dental hygienist, if available, or trained assistant, who shall be present during each examination. Parents or guardians of children [sic] of school age shall be advised in advance of the date of examination and urged to be present. Medical examinations shall be made in the presence of the parent or guardian.

§14-1406. Recommendations

Recommendations as to medical, surgical or dental care shall be sent to each parent or guardian and to the family physician or family dentist on forms prepared or approved by the Secretary of Health with instructions to the parent or guardian to consult the family

physician or family dentist and to notify the school authorities of the action taken with respect to the recommendations.

School physicians or school nurses shall inform teachers of the health conditions of pupils which may affect behavior, appearance or scholastic performance.

§14-1407. Examinations by examiners of own choice

In lieu of the medical or dental examinations prescribed by this article, any child of school age may furnish. . .a. . .report of examination made at his own expense by his family physician or family dentist. . . .

§14-1409. Confidentiality, transference and removal of health records

All health records established and maintained pursuant to this act shall be confidential, and their contents shall be divulged only when necessary for the health of the child or at the request of the parents or guardian to a physician. . . .

In the case of any child of school age who enrolls in any school, public or private, in any district and who previously attended school in another district in Pennsylvania, the district or school wherein the child is newly enrolled shall request and the district or school where the child previously attended shall surrender the health record of the child. School districts, joint school boards or private schools, shall not destroy a child's health record for a period of at least two years after the child ceases to be enrolled, but may surrender such child's health record or portion thereof to his parent or guardian if the child does not re-enroll in an elementary or secondary school in Pennsylvania.

§14-1410. Employment of school health personnel

Except as otherwise provided in this article, all school districts. . .shall employ school physicians and school dentists but only with the approval of the Secretary of Health. . . .and shall employ one or more school nurses. ...For special examinations. . . school districts or joint school boards may engage the services of opthalmologists or other licensed medical specialists or of optometrists. Any school district. . .may employ dental hygenists. . . .

§14-1413. Supplemental duties of school physicians

Duties of school physicians shall include the vaccination of children of indigent parents, official re-vaccination of children having temporary vaccination certificates, physical examination of children incident to the issuance of employment certificates as required by the provisions of the Child Labor Act, approval of the return of pupils who have been absent due to a contagious disease or suspected contagious disease, and such other duties as may be required by the board of school directors not inconsistent with the rules and regulations of the Secretary of Health.

§14-1414. Care and treatment of pupils

Any school district or joint school board may provide for the care and treatment of defective eyes, ears, and teeth of all children of school age within the district.

§14-1415. Public assistance for medical, dental or surgical care

If the medical record of any child at any time discloses a condition which requires medical, dental or surgical treatment and the parent or guardian states to the school authorities that he is financially unable to have a physician or dentist of his choice render such care, he shall be advised that the cost of such care may be provided if application is made to the appropriate county board of public assistance. Upon application, the county board of assistance shall authorize payment for necessary medical, dental or surgical care. . . .

§14-1416. Precautions against spread of tuberculosis

No person having any form of tuberculosis in a transmissable stage shall be a pupil, teacher, janitor or any other employe [sic] in any school except in a special school carried on under the regulations made for such schools by the Secretary of Health. . . .

§14-1417. Pupils relieved from compulsory attendance

Any pupil prevented from attending school on account of the health or sanitation laws of this Commonwealth, or by the sanitary regulations of the local board of health or the board of school directors, is relieved from complying with the provisions of the act amended hereby concerning compulsory attendance during the time he is prevented from attending school.

§14-1413. Objections to examination or treatment on religious grounds

This article shall not be construed to compel any person to submit to any medical or dental examination or treatment under the authority of this act when the person or the parent or guardian of the person, if a minor, objects to the examination or treatment on religious grounds or to permit any discrimination against any person on account of such objections: Provided, That exemption from medical or dental examination shall not be granted if the Secretary of Health finds that facts exist under which the exemption constitutes a present substantial menace to the health of other persons exposed to contact with the unexamined person.

Case Law

Mississippi. One of the few cases that has come before the Mississippi Supreme Court concerning the health of children was Hartman v May. (1) In this case a child eight years old was excluded from the public schools of Biloxi because he had not been vaccinated against smallpox. The school authorities based their action on an ordinance of the city of Biloxi and on a resolution of the board of trustees of the city public schools, both requiring all children to be vaccinated against smallpox before they could enter the schools. The child through his father claimed that the restrictions were invalid and constituted no reasonable excuse or basis for the exclusion of the boy from the public schools.

The court found for the school authorities, noting that the Legislature had expressly authorized municipal authorities "to make regulations to secure the general health of the municipality" and "to make regulations to prevent the intro-

duction and spread of contagious or infectious diseases" and to "make quarantine laws for that purpose."

At the time, Mississippi had a compulsory attendance law. The court held that the regulation for vaccination took precedence, noting that, taken together, the requirements, "do not mean that a child is entitled to attend a public school regardless of his conduct, but, on the contrary, that it is subject to such reasonable rules for the government of the school as the trustees thereof may see fit to adopt." (2)

In a recent case (3), the federal district court held that relatives with whom a dependent child is living are entitled to benefits under section 7290-38 Mississippi Code Annotated (1942), including reimbursement for medical expenses incurred due to the denial of the benefits to the welfare mother or other caretaker relatives.

Elsewhere. Generally, courts have held that measures prescribed by municipal or school authorities as a condition of school attendance do not conflict with statutory or constitutional provisions giving school-age children the privilege of attending school. (4) Similarly, courts have held that the prescription of health measures as a condition of school attendance is not inconsistent with compulsory education laws. (5) School districts in some instances have adopted regulations requiring the presentation of a certificate based on a physician's examination as a condition of admission to school. Jurisdictions have allowed such regulations as being within the police power of the particular states which they

have delegated to those in charge of the public schools. Consequently, these regulations need not depend upon an express statement in the statutes. (6)

Although one jurisdiction has held that school boards have the power to employ doctors, dentists, and nurses, independently of any mention in the statutes, (7) another has clearly limited the rendering of medical, surgical, and dental services to pupils as being beyond the powers to be exercised by a school district or its officers, and has said that this power does not exist in the absence of express legislative language so providing. (8)

Many jurisdictions have allowed the requirement that children be vaccinated as a condition to enrolling in school. (9) A statute to this effect has been held by the U.S. Supreme Court to be a valid exercise of the police power of the state. (10) It was stated that the right to attend the public schools is necessarily subject to some restrictions and limitations in the interest of the public health and therefore, no constitutional rights are violated. (11)

Recommendations

Based on the information presented above, it is recommended that:

1. There be enacted by the legislature a provision for the testing of infants for phenylketonuria (PKU) similar to the provisions in Alabama, i.e.,

> It shall be the duty of the administrative officer or other person in charge of each institution caring for infants twenty-eight days or less of age, or the physician attending a newborn child, or the person attending a newborn child that was not attended by a physician, to cause to have administered to every such infant or child in his care a reliable test for phenylketonuria (PKU), such as the Guthrie test or any other test considered equally reliable by the state board of health. Testing and the recording of the results of such tests shall be performed at such times and in such manner as may be prescribed by the state board of health. Provided, that no such test shall be given to any child whose parents object thereto on the grounds that such tests conflict with their religious tenets and practices.
>
> The state board of health shall promulgate such rules and regulations as it considers necessary to provide for the care and treatment of those newborn infants whose tests are determined positive, including but not limited to advising dietary treatment for such infants. The state board of health shall promulgate any other rules and regulations necessary to effectuate the provisions of this section.

As a refinement, consideration should be given to including in such a law not only a test for PKU, but for "other preventable heritable disorders leading to mental retardation or physical defects," with the state board of health having the authority to designate the tests and to promulgate the necessary regulations to administer the tests.

2. There be conducted a feasibility study of methods of improving the nutrition of pregnant women and infants. One approach might be to authorize physicians and local public health agencies to issue to needy pregnant women and to needy mothers of infants coupons redeemable in grocery stores for certain foodstuffs needed for adequate nutrition and which are not likely to be obtained otherwise. Such coupons would be redeemable to some state agency for cash by the grocery stores.

3. The present provision for immunization against smallpox, polio, measles, mumps, etc. and for chest X-rays be modified from merely authorizing local public school boards to have such a requirement to a state-wide requirement for all children entering any school in the state, public or private.

4. The present law which states that the state board of education shall make "adequate provision for. . .health examination" of school children be strengthened considerably. In particular, schools should be required to administer--and given adequate funds to accomplish--physical examinations of children at certain intervals, such as a medical examination of each child upon entry into any public or private school in the state, and when each child is in the sixth grade and the eleventh grade; a dental examination of each child upon entry into any public or private school in the state, and when each child is in the third grade and the seventh grade; and sight and hearing tests of each child annually.

5. Legislation be enacted to authorize school districts to employ physicians, nurses, dentists, dental hygenists, and other health care personnel on either a part-time or full-time basis, paying for these persons from any combination of local, state, and federal funds which may be available. School districts should also be authorized to provide space and equipment for health care personnel to conduct physical examinations and provide limited care and treatment for school-age children who are in need of such services.

6. Legislation be enacted such that recommendations from a physical examination of a child by school health care personnel be sent to the parents (or guardians) and where designated, to the family physician or dentist. In addition, this legislation should provide that the child's teacher or teachers be informed of health conditions that may affect the child's behavior or appearance or learning.

7. Legislation be enacted to appropriate state funds for and make provision (possibly through the accreditation procedure) for each school district to have a certain number of health service personnel, including nurses, dental hygenists, physicians, and dentists. As a minimum, each school district should have a nurse, and additional nurses should be made available for not more than each 1,500 students or major fraction thereof.

8. Legislation be enacted to provide community health services for minors similar to the following provisions in Alabama, i.e.,

> Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of or to treat pregnancy, venereal disease, drug dependency, alcohol toxity or any reportable disease and the consent of no other person shall be deemed necessary.

In addition it should be added that the giving of the medical, health or mental health services to the minor will be held in confidence and, as necessary, free of charge.

9. Inasmuch as not all children attend the public schools, the law providing for the testing for sickle cell anemia be expanded to provide for testing at times other than "before or during the first year of attendance in a public school." One such time might be in the process of applying for a marriage license.

10. Legislation be enacted to require thorough physical examinations of prospective participants in all sports with the danger of physical injury and the attendance of a physician at each interscholastic athletic event of a contact nature.

11. By legislation or accreditation requirement, each school building have at least one adult assigned to it who has successfully completed an approved first-aid course.

12. Certification requirements include the mastery of rudiments of first aid, such as the initial treatment of minor cuts and burns, fainting, etc.; the ability to recognize symptoms of diabetes, eye problems, hearing problems, epilepsy, asthma, etc.; aiding a person with an epileptic seizure, etc.

NOTES

(1) Hartman v May et al. 168 Miss. 477, 151 So. 737 (1934).

(2) Ibid.

(3) Triplett v Cobb 331 F. Supp. 652. (N.D. Miss. 1971).

(4) People v Board of Education, 234 Ill 422, 84 NE 1046; Mathews v Kalamazoo Bd. of Educ. 127 Mich 530, 86 NW 1036.

(5) State v Zimmerman, 56 Minn 531, 90 NW 783; Hartman v May, 168 Miss 477, 151 So 737; State v Cole, 220 Mo 697, 119 NW 424.

(6) Streich v Board of Education, 34 S.D. 169, 147 N.W. 779.

(7) Hallett v Post Printing & Pub. Co. 68 Colo 573, 192 P 658.

(8) McGilvra v Seattle School District. 1133 Wash 619, 194 P 817.

(9) Zucht v King, 260 U.S. 174; Cude v State, 237 Ark. 927, 377 S.W. 2d 816; Hartman v May, 168 Miss 477, 151 So. 737.

(10) Ibid. See also State v Board of Education, 76 Ohio 297, 81 N.E. 568.

(11) In addition to Zucht and Cude (supra), see also Hutchins v Durham, 137 N.C. 68, 49 S.E. 46.